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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,848	10/17/2003	Richard S. Ginn	937.04	2084
8685	7590	02/16/2007	EXAMINER	
DERGOSITS & NOAH LLP FOUR EMBARCADERO CENTER, SUITE 1450 SAN FRANCISCO, CA 94111			DAWSON, GLENN K	
		ART UNIT	PAPER NUMBER	
		3731		
SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE		DELIVERY MODE	
3 MONTHS	02/16/2007		PAPER	

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/687,848	GINN, RICHARD S.	
	Examiner Glenn K. Dawson	Art Unit 3731	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 28 November 2006.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-9 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-9 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_

5)  Notice of Informal Patent Application

6)  Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Li-6350274.

Li discloses a device as shown in fig. 1 wherein an elongate member 11 has a distal opening 40 and a proximal opening through which element 22 extends. The distal end of a closure or seal element 13 is distal of the distal opening as shown in fig. 1. In use, the elongate member is advanced until blood is seen out the proximal end coming from blood entering into hole 42. Then the elongate member is retracted until the blood ceases indicating that the distal end of the elongate member is even with the vessel wall. Then tube 11 is retracted leaving the closure seal 13 in place in the needle tract through the vessel wall. The occlusive seal member is expandable and absorbable. See col. 9 line 66-col. 10 line 3 and claim 8.

Claims 1-4 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Zhu-2002/0072767.

Zhu discloses a device having an elongated member 86 having a plurality of distal openings 92 through the sidewall and in communication with the proximal opening 90. As shown in fig. 6, distal to the 2<sup>nd</sup> distal openings 92 is a closure seal 80, which is gelfoam, both expandable and absorbable. See paragraph 70.

***Response to Arguments***

Applicant's arguments filed 11-28-2006 have been fully considered but they are not persuasive.

Applicant argues that Li does not disclose that the closure element is distal to the opening 40. The examiner contends that the distal end of the closure element is flush with the end of the tube; therefore at least a distal portion of the closure element is distal to hole 40. Additionally, as shown in fig. 4, at some point the closure element would be entirely distal to the hole 40.

Applicant also argues that openings 66 do not communicate with hole 92. However, the examiner detailed that it is opening 90 which communicates with hole 92, as shown in fig. 3. As shown in fig. 6, the closure element is located distally of the hole 92. The fact that the hole 92 may be used to deliver an adhesive is irrelevant. If one placed the structure shown in fig. 6 into a blood vessel such that hole 92 were inside the vessel, blood would enter hole 92 and travel up and out hole 90, or to the port which would accommodate a syringe or supply of adhesive. If the closure element were placed inside a vessel and then withdrawn, the closure element could easily plug a puncture opening. The examiner is not stating that doing so would be obvious. If it were,

then the method claims would be rejected under Zhu as well. The examiner is stating that the structure disclosed by ZHU would allow it to function as claimed.

***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Glenn K. Dawson whose telephone number is 571-272-4694. The examiner can normally be reached on M-Th 7:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan T. Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Glenn K Dawson  
Primary Examiner  
Art Unit 3731

Gkd  
09 February 2007